

**Internal Revenue Service**  
**memorandum**

DFBergkuist  
INTL-289-90

date:

MAY 31 1990

to:

Gerry Kahn, Group Manger  
ATTN: Bill Klaus

E:E:G:1666

from:

Paul Miller, Technical Assistant

CC:INTL

subject:

Allocation of Tax Benefit Lease Interest Expenses

The March, 1990, issue of the International Programs Issues and Audit Techniques Digest reprinted your June 20, 1989, memo concerning the allocation of tax benefit lease interest expenses. This memo was consistent with a March 3, 1989, memo from the District Counsel in Albany N.Y. to Bill Klaus, the International Examiner on the underlying case. It is noted that the March 3, 1989, memo indicated that a position paper on this issue was being prepared for the Acting Chief Counsel for review and that it was not certain what the ultimate decision would be.

The Acting Chief Counsel has specifically considered the issue of "safe harbor leases" and the facts of the case that was the subject of the June 20, 1989, memo. It was concluded that, while the issues in question were properly identified and addressed on audit, safe harbor leases do not present a favorable environment in which to pursue the issues raised any further. Based on the language of section 168(f)(8), which was in existence for only a relatively short period of time, and the legislative history of this provision, leases such as those in issue will be viewed as valid leases for all purposes.

Therefore, it is the view of this office that because of the hazards of litigation and for general policy purposes, the issue referred to in the June 20, 1989, memo, and in all similar cases, should not be pursued.

CC: District Counsel  
Albany N.Y.

ATTN: Chris Sterner

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